

Intermediary Service Organizations (ISOs): Key Characteristics and Issues

Presented at:

The Centers for Medicaid and Medicare Services (CMS) Conference

"Living and Working in the Community 2003"

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Renaissance Harborplace Hotel
Baltimore, MD

March 5, 2003

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I. Overview

- Over the past twenty years, program participants of all ages with disabilities and chronic conditions have wanted more choice and control over the services and supports they receive.
- In an August 2001 inventory of self-directed support service programs, 49 states (129 programs) reported applying the principles of self-direction and self-determination to one or more publicly-funded support service programs.
- Historically, some state human service program administrators have considered self-directed home-based workers (HBWs) as independent contractors to ease the employer-related burden on program participants receiving self-directed support services. However, per the IRS, the majority HBWs are not independent contractors. Tax compliance for independent contractor HBWs historically has been poor.
- The IRS' National Taxpayer Advocate's FY 2001 Annual Report to Congress emphasizes the fact that the majority of HBWs are employees and not independent contractors. It recommends that the IRS amend section 3121(d)(3) of the Code by adding HBW to its definition of "employee."
- The Report also recommends that the IRS enact a new section of the Code that removes liability for employment taxes from the common law employer (e.g., program participant service recipient) and deems the administrator of the HBW funding (e.g., the state, state agency or intermediary service organization, regardless of the original source of funding) as the agent for the purpose of withholding, reporting and paying employment taxes on behalf of HBWs.

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I. Overview (continued)

- Intermediary Service Organizations (ISOs) can provide an array of fiscal and supportive services that facilitate the delivery and use of self-directed support services and ensure state program administrators, program participants, their representatives and their HBWs that they are in compliance with federal, state and local employment tax, labor and program rules.
- In the August 2001 self-directed support service, inventory, 38 states (76%) administering 96 self--directed support service programs (72% of the programs identified) reported using one or more types of intermediary service organizations (ISOs). One hundred 121 ISOs were reported to be in operation.
- ISOs vary in their corporate organizational structure, the type of services provided, administrative costs, and the nature of the employer/employee relationship.
- The type of ISO services appropriate for an program participant depends on his/her ability and desire to perform the employer-related tasks associated with self-directed HCB LTC service programs.

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I. Overview (continued)

- CMS has classified Fiscal and Supportive ISO services into two primary categories:
 - Financial Management Services
 - Fiscal/Employer Agents
 - Agency with Choice
 - Supports Brokerage Services
- The Spectrum ISO is an operational model that provides a variety of Fiscal Management and Supports Brokerage services under one umbrella organizations (e.g., an Organized Health Care Delivery System).
- CMS now considers Fiscal/Employer Agent and Support Brokerage services (in addition to Agency with Choice ISO service) to be qualified Medicaid state plan and waiver services. States now have the option of billing these services as administrative or program expenses for the purpose of claiming FFP and in developing Organized Health Care Delivery Systems
- This presentation will provide an overview of the key characteristics and issues related to ISOs.

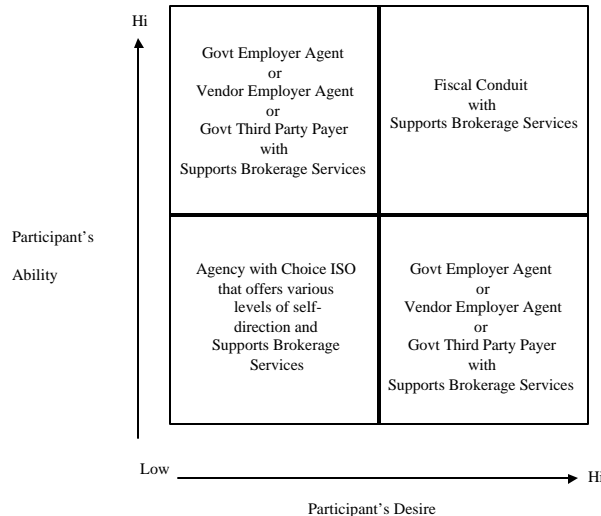
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II. Types of Intermediary Service Organizations

Fiscal Conduit (FMS)	Government or Vendor	Individual or representative unless agency-based services used.	Disburses public funds via cash or voucher payments to individuals/representatives and performs other related duties.
Government Employer Agent (FMS)	State/County (Section 3504 of the IRS Code and IRS Rev. Proc. 80-4)	Individual or representative unless agency-based services used.	Under IRS Rev. Proc. 80-4, a government entity acts as "employer agent" for individuals for limited purpose of withholding, filing and depositing federal employment taxes. Also may invoice a state for public funds, manage payroll, pay vendors, generate reports, & broker worker's comp & health insurance.
Vendor Employer Agent (FMS)	Vendor (Section 3504 of the IRS Code and IRS Rev. Proc. 70-6)	Individual or representative unless agency-based services used.	Same as Government Employer Agent described above except as vendor in accordance with IRS Rev. Proc. 70-6.
Government Third Party Payer (FMS)	State/County (Section 3401(d)(1) of IRS Code)	Individual or representative unless agency-based services used.	Government entity acts as the "statutory employer" of HBWs for sole purpose of federal employment tax withholding, filing and payment. Duties similar to Govt Employer Agent & has option to subcontract out payroll function.
Agency with Choice (FMS)	Agency (e.g., CIL, Home Health, AAA or social service)	Agency or its subcontracting agency (e.g., CIL, Home Health, AAA or social service)	Agency is the <i>common law employer</i> of HBW. Individual is the <i>managing employer</i> of his/her HBW and actively participates in recruiting, training, supervising & discharging HBWs. Agency also may provide supportive services to assist individual being a managing employer.
Supports Brokerage	Distinct vendor or individual. Also may be provided through other ISO models.	Individual/representative or agency	Provides an array of supportive services to individuals and representatives (i.e., assessments, employer skills training, & worker recruitment assistance).
Spectrum ISO	Vendor, may subcontract out some services.	Individual/representative or agency	Provides an array of ISO services under one umbrella organization.

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III. Use of ISO Models by Level of Program Participant Ability and Desire to Manage the Employer-Related Tasks Associated with Self-directed Support Service Programs



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IV. What are Financial Management Services?

- Financial Management Services are an array of fiscal and payroll-related services provided to public payers, program participants and their representatives. These services are delivered either by Fiscal/Employer Agents or Agency with Choice ISOs.
- Under the Fiscal/Employer Agent ISO model, the program participant/representative is the common law employer of his/her HBW.
- Under the Agency with Choice ISO model, the agency is the common law employer of the HBW and the program participant/representative is the managing employer of his/her HBW.
- There are four models of Fiscal/Employer Agents
 - Fiscal Conduit
 - Government Fiscal/Employer Agent (in accordance with Section 3504 of the IRS Code)
 - Vendor Fiscal/Employer Agent (in accordance with Section 3504 of the IRS Code)
 - Government Third Party Payer (in accordance with Section 3401(d)(1) of the IRS Code)

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V. What is a Fiscal Conduit?

- The *Fiscal Conduit ISO* model basically disburses public funds either directly or through vouchers to program participants or representatives who manage their services and supports themselves.
- This model allows program participants/representatives to be the common law employer of their HBWs, provides them with the maximum level of choice and control over their services and the HBWs that provide them, but provides them with few, if any, supports.
- In addition, the Fiscal Conduit model provides states and local governments with the least assurance that federal, state and local tax and labor laws are being complied with.
- The Fiscal Conduit model is only used with non-Medicaid funded self-directed programs (e.g., Maine's Consumer-directed Home-based Care Program) and Medicaid HCBS Demonstration (1115) waiver programs (e.g., AR, FL and NJ RWJ Cash and Counseling Demonstration Programs).
- In the August 2001 inventory, of 121 the ISOs identified, 15 (12%) were Fiscal Conduit.
- If the IRS' FY 2001 National Taxpayers Advocate's Report to Congress recommendations are implemented, this Fiscal/Employer Agent model will not be an option for states and local government agencies who administer publicly-funded self-directed support service programs.

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VI. What is a Government Fiscal/Employer Agent?

- Under the *Government Fiscal/Employer Agent* model, a state or local government entity may apply for and receive approval from the IRS (under Section 3504 of the IRS Code and IRS Revenue Procedure 80-4) to be an *employer agent* on behalf of program participants for the limited purpose of withholding, filing and depositing federal employment taxes (e.g., FICA and FUTA) and income taxes (if required) for HBWs they hire directly. It may also invoice a state for public funds, disburse and track these funds, manage federal advanced earned income credits and income tax as necessary, withhold, file and deposit state income (if required) and employment taxes (e.g., SUTA and disability, if applicable), prepare and distribute payroll checks to HBWs hired by program participants directly and process and pay non-labor related invoices as required. It may also broker worker's compensation and other insurance, collect and verify and process workers' timesheets, conduct criminal background checks on prospective workers, assist program participants with verifying workers' citizenship/legal alien status and generate standardized reports for state/county program agencies, program participants and their representatives, when appropriate.
- In the August 2001 inventory, five (4%) ISOs were operating as IRS Government Fiscal/Employer Agents (under IRS Rev. Proc. 80-4).
- This model provides the program participant/representative with a high level of choice and control while providing him/her with employer-related supports (e.g., payroll and bill paying assistance). A public program that uses this ISO model is the Michigan Home Help Program.
- A Government Fiscal/Employer Agent can perform these employer functions on behalf of program participants/representatives without being considered the common law employer of an program participant's HBW(s).

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VII. What is a Vendor Fiscal/Employer Agent?

- Under the *Vendor Fiscal/Employer Agent* model, a private or public vendor entity or authority may apply for and be approved by the IRS (under IRS Revenue Procedure 70-6) to act as an *employer agent* on behalf of program participants/representatives and perform the same tasks as a Government Fiscal/Employer Agent.
- In the August 2001 inventory, 55 (45%) were ISOs were operating as Vendor Fiscal/ Employer Agents (includes CA that uses a public authority for at least one program). A best practice example of a Vendor Fiscal/Employer Agent is the Agent for theNew Jersey Personal Preference Program.
- This model provides program participants/representatives with a high level of choice and control while providing employer-related supports, (e.g., payroll and bill paying assistance).
- If the IRS' FY 2001 National Taxpayers Advocate's Report to Congress recommendations are implemented, the Government and Vendor Fiscal/Employer Agent models will be the required options for states and local government agencies who administer publicly-funded self-directed support service programs (unless Agency with Choice ISO model is used).

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VIII. What is a Government Third Party Payer?

- Under the *Government Third Party Payer* model, a state or local government agency acts as the *statutory employer* of the HBW for the sole the purpose of withholding, filing and paying income and employment taxes under Section 3401(d)(1) of the IRS Code. The program participant /representative is the common law employer of his/her HBW(s) for all other employer-related tasks. The Government Third Party Payer would perform many of the same functions performed by the the Government IRS Employer Agent under Section 3504 of the IRS Code as described earlier. It can also contract out many of the functions (e.g., payroll) to a vendor entity, however, the sole liability for federal tax noncompliance lies with the government entity.
- This Fiscal/Employer Agent model is being used by the State of Washington as required by regional IRS staff.
- Some IRS regional offices prefer this model when a program participant/representative does not have control over the payment of wages to HBWs. However, there is a debate over what is meant by having *control*.
- To date, IRS Central Office has yet to decide whether it will require all states to convert from being Government or Vendor Fiscal/Employer Agents under Section 3504 to Government Third Party Payers under Section 3401(d)(1) of the IRS Code. Also, they have not published the procedures for state and local governments to make the conversion and then operate under Section 3401(d)(1) on an ongoing basis. States should operate their Government or Vendor Fiscal/Employer Agents under Section 3504 of the Code until instructed to do otherwise by the IRS.

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IX. What is the Difference Between a Fiscal /Employer Agent and a Government Third Party Payer?

- The major difference between being a Fiscal/Employer Agent under Section 3504 and a Government Third Party Payer under Section 3401(d)(1) of the IRS Code is as follows.
 - Under Section 3504, the entity is the “agent” for the program participant/representative who is the common law employer of the support service workers he/she hires directly. Under this arrangement, if there is any federal or state tax noncompliance, all the parties (government program agency, government or Vendor Fiscal/Employer agent, program participant/representative and HBW) are technically liable. However, since the Fiscal/Employer Agent is either a government entity or a vendor under contract with a government, the Fiscal/Employer Agent is ultimately responsible for being in compliance with federal and state labor and tax rules.
 - Under Section 3401(d)(1), the entity is the “statutory employer” of the program participant’s/representative’s HBW for the purpose of federal tax filing. Thus, the liability for federal tax noncompliance falls directly on the Government Third Party Payer. The Government entity may subcontract the payroll task to a vendor.
 - However, states have expressed concern that if they are considered the “statutory employer” for tax purposes, other entities may try to make the case that the state also is the employer for other reasons (e.g., unemployment and general liability claims and collective bargaining). States may not want to take on this level of risk and responsibility.

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X. What is an Agency with Choice ISO?

- Under the *Agency with Choice* model, a variety of different types of agencies (e.g., Centers for Independent Living, social service agencies such as United Cerebral Palsy and Easter Seals, traditional home health agencies, Area Agencies on Aging, and organizations that are developed specifically to fulfill the role, such as Concepts of Independence in NY or Granite State Independent Living Foundation (GSILF) in NH) that provide support services to program participants in a self-directed manner. The agency is the **common law employer** of the HBW while the program participant and/or his or her representative is considered the **managing employer**. Duties of an Agency with Choice may include: invoicing the state/county for public funds, conducting human resource activities, providing training in conjunction with the managing employer, managing all aspects of payroll, providing a variety of support services (e.g., employer-skills training, HBW registry, assessments), monitoring HBWs' performance in conjunction with the managing employer. Managing employers are permitted to recruit their HBWs and refer them to the ISO for HR processing, determine the HBWs' work schedule and how activities are to be performed, supervise HBWs' daily activities and discharge them when necessary. Some Agency with Choice ISOs allow the managing employer to be responsible for training their HBWs. Best practice programs include the New Hampshire Medicaid Personal Care Attendant Program administered by Granite State Independent Living and the New Jersey Self-Determination Program.
- In the August 2001 inventory, 21percent (25) of ISOs reported operating as Agency with Choice ISOs.
- A "true" Agency with Choice ISO often looks and operates like a Fiscal/Employer Agent.

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XI. What is a Supports Brokerage?

- **Supports Brokerage** is a broadly defined service designed to enable a participant in a self-directed program to develop an effective person-centered plan, manage an individual budget, and to locate, access and coordinate needed services. The service may be delivered by a person or organization.
- A supports broker is a person or organization that serves as a link between the program participant/representative and the self-directed support program, assisting the participant/representative with whatever is needed to develop a person-centered plan, develop and manage an individual budget and to support and sustain the participant/representative as they direct their services and HBWs.
- Supports brokers do not provide personal assistance services directly. A supports broker is a *personal agent* who works on behalf of the program participant and the participant's circle or social support network, and under the direction of the program participant and/or his representative. He/she should support the philosophy of self-direction and have specific skills, not necessarily specific degrees or certificates. He/she may also receive specific training to enhance their skills.
- Typical functions of a Supports Brokerage include:
 - Developing person-centered care plans,
 - Assisting with the development and updating individual budgets,
 - Managing individual budgets,
 - Assisting program participants/representatives in securing needed services, and
 - Monitoring service quality and participant/representative satisfaction with services.

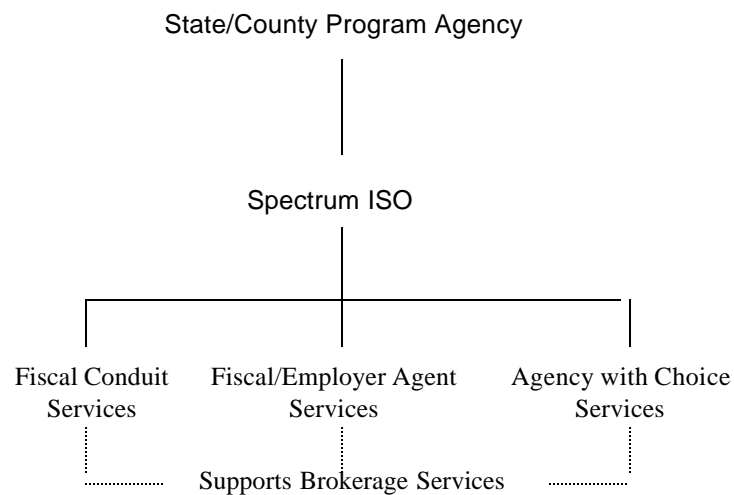
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XII. What is a Spectrum ISO?

- Under the *Spectrum ISO* model, an umbrella organization provides an array of Financial Management and Supports Brokerage services in a seamless and effective manner.
- One way to implement a Spectrum ISO model for Medicaid state plan and waiver programs is through an Organized Health Care Delivery Model (OHCDS).
- OHCDS that provide (either themselves or through a subcontractor) Fiscal/Employer Agent services do not have to obtain a Medicaid provider agreement between each HBW and the State Medicaid program. Rather, they must have an executed agreement between each HBW and itself which is maintained at the OHCDS.

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XIII. ISO Models Operationalized as a Spectrum ISO



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XIV. What are Some Issues/Experiences of ISOs That Provide Financial Management Services?

■ **Fiscal Conduits Report:**

- The demand for Fiscal Conduit services has been low. Very few program participants /representatives are willing to manage the payroll function themselves when Government or Vendor Fiscal/Employer Agent services are available.
- Some states and program participants/representatives that use the Fiscal Conduit model treat HBWs as independent contractors incorrectly to ease the payroll burden. This puts the state program agency, the program participant/representative and the HBW at considerable risk for noncompliance with federal, state and local taxes.
- Those Fiscal Conduits that provide payroll preparation training continue to struggle with developing and implementing effective training and testing materials.

■ **Government Fiscal/Employer Agents (Under Section 3504 of the IRS Code) report:**

- No matter what HBWs are told, many HBWs still think the Government Fiscal/Employer Agent is their employer. States report that they often get requests for references for loans, mortgages and jobs. This could also be a problem for Government Third Party Payers under Section 3401(d)(1).
- If the state tries to fit the HBW payroll system into its state employee payroll system, often it can be problematic. States should develop and operate HBW payroll systems that are separate from the state employee payroll system.

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XIV. What are Some Issues/Experiences of ISOs That Provide Financial Management Services?(continued)

■ **Vendor Fiscal/Employer Agents (Under Section 3504 of the IRS Code) report:**

- Some IRS regional service center staff are not knowledgeable about the IRS employer agent function under 3504 of the IRS Code and IRS Rev. Proc. 70-6 and 80-4. "Sometimes IRS staff will try to "fit" the employer agent function into what they know of the IRS Code." Communication with IRS regional center staff also has been inconsistent. "Talk to three people and you'll get three different answers."
- IRS instructions often do not describe how Government and Vendor Fiscal/Employer Agent Fiscal ISOs should complete the required tax forms.
- Obtaining FEINs for program participants/representatives in a timely manner varies by IRS regional office.
- Receiving IRS FUTA credit for timely payment of SUTA due to the aggregate filing of FUTA and individual filing of SUTA has been found to be problematic for some Agents.
- It is a challenge to use the IRS Schedule H when an program participant was not capable signing.
- DHHS/ASPE has developed a workgroup with IRS to clarify the roles, responsibilities and processes of Government and Vendor Fiscal/Employer Agents and Government Third Party Payers. IRS is in the process of preparing and issuing a clarification bulletin on the subject.

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XIV. What are Some Issues/Experiences of ISOs That Provide Financial Management Services?

(continued)

- Communication problems (similar to those encountered with the IRS) with state income and employment tax agencies. The majority of these can be resolved with effective communication and education. In some cases, the state authorities were able to streamline some of the processes (e.g., allow the ISO to file SUTA annually (e.g., NJ) or file SUTA in the aggregate (e.g., WY) to match process for FUTA filing for employer agents under Section 3504 of the IRS Code).
- Although some states have a vehicle for program participants to purchase affordable worker's compensation insurance (WCI) coverage for their HBWs, in some cases, insurance carriers were not willing to sell it due to small profit margins. In some states, (e.g., NJ) participants can purchase WCI through their homeowners/renters insurance at affordable rates. In other states' (e.g., MA and NJ), Fiscal/Employer Agents have been successful in brokering WCI policies with particular insurance carriers (using volume purchasing opportunities) to make it more financially desirable for an insurance carrier to sell (WCI) to program participants.
- Spending more time communicating with/orienting program participants/representatives about self-directed support service programs and Fiscal/Employer Agent services than expected (raising a labor and a cost issue). However, once program participants/representatives were educated, it was reported that the level of effort decreased.
- A significant time lag between when they their contract with a State was executed and when they started serving participants. In some cases, this caused significant cash flow problems.

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XIV. What are Some Issues/Experiences of ISOs That Provide Financial Management Services?

(continued)

- Sufficient demand (volume) is essential for a Vendor Fiscal/Employer Agent to remain financially viable. Some states and programs do not have the volume necessary to support multiple Vendor Fiscal/Employer Agents.
- Fiscal/Employer Agent Readiness Reviews and Mid and Annual Performance Reviews are effective methods for monitoring Agents' ability to perform the required tasks and their ongoing performance.
- **Government Third Party Payer (Under Section 3401(d)(1) of IRS Code)**
 - To date, little is known about states' experiences as Government Third Party Payers under Section 3401(d)(1) of the IRS Code.
 - It is thought that some states may not be willing to take on this role due to perceived liability for other employer related matters (e.g., unemployment and general liability claims and collective bargaining).
 - This model removes the option for states to have vendors be the employer agent directly if public funds are being used. It is thought that state and local program agencies should have the option of using either a Government or a Vendor Fiscal/Employer Agent under Section 3504 of the IRS Code.

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XIV. What are Some Issues/Experiences of ISOs That Provide Financial Management Services?

(continued)

■ Agency with Choice ISOs report:

- Their unemployment, worker's compensation, and general liability insurance claims are no more than traditional agencies and, in some cases, they are less.
- If an Agency of Choice ISO operates in accordance with the philosophies of self-direction and self-determination, the ISO appears to function as a Fiscal/Employer Agent even though the ISO is the common law employer of the program participants' HBWs.
- It is important to use the same hiring policies and procedures for HBWs referred in by program participants/representatives for hire as for those hired directly by the agency under its traditional service program. Developing appropriate job categories is important.
- Concerns about the potential risk of being considered "joint employers" with the program participant/representative. "Where does the employer responsibility/ liability fall in joint employment situations?"

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XV. What are Some Issues/Experiences of ISOs That Provide Supports Brokerage Services?

■ Supports Brokerage Organizations report:

- Effective communication between Supports Brokerage organizations and individuals and Financial Management Services organizations is essential to operate an effective self-directed support service program.
- States continue to struggle to determine how many Supports Brokerage individuals and/or organizations is "enough" to serve program participants.
- States continue to struggle with how much training is necessary for Supports Brokers, and the timing of initial and ongoing training.
- States continue to struggle with what reporting requirements should be for Supports Brokers (e.g., only to the program participant, the participant and his/her case manager).
- States continue to struggle with what the Supports Broker relationship should be with program participants' representatives and what constitutes a valid representative.
- States continue to struggle with managing Supports Brokers attitudes towards self-direction, especially when their previous responsibility was as case managers.

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XVI. What are Some Issues/Experiences of Spectrum ISO? (continued)

- To date, no state has developed and implemented an effective Spectrum ISO model due to the complexity of the model. States tend to get their Fiscal/Employer Agents designed and implemented first. Then they look at developing a Spectrum.
- New CMS policy related to Organized Health Delivery Systems may facilitate the development and implementation of this ISO model.
- However, a significant challenge for Spectrum ISOs to address is the issue of “steering” and designing and implementing effective fire walls between direct care and ISO services (e.g., Agency with Choice and Fiscal/Employer Agent and Supports Brokerage services).